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STATEMENT BY ASSISTANT ATTORNEY GENERAL R. HEWITT PATE
REGARDING THE CLOSING OF THE
WESTERN UNION MONEY TRANSFER INVESTIGATION

***Competition For Money Transfer Services Benefitting From
Increased Market Size, Existence of New Products and Entry By New Providers***

WASHINGTON, D.C. – R. Hewitt Pate, Assistant Attorney General in charge of the Department's Antitrust Division, issued the following statement today after the Department announced the closing of its money transfer services investigation, which examined whether Western Union's exclusive contracts with its retail agents are harming competition in either the domestic or international money transfer services markets, or in the domestic emergency bill-payment services market:

"After an extensive investigation, the Antitrust Division has concluded that the facts do not support a claim that Western Union's contracting practices with its agents in the United States have caused harm to consumers. The Division's investigation found that competition for money transfer and emergency bill payment services has persisted, and in many areas intensified, in recent years. This increased competition is a result of several factors including significant growth in the demand for U.S.-to-overseas money transfer services, the increased popularity of non-agent-based electronic bill payment services among consumers, and entry of new money transfer competitors."

"The Division continues to have serious concerns regarding the lack of vigorous price competition in certain U.S.-foreign country 'corridors' and will monitor the international money transfer services market. However, we have determined that competition in such markets is often more directly influenced by corridor-specific conditions such as market size, local regulation, and the nature of the local financial infrastructure, than by Western Union's contracting practices. Therefore, the Division has decided to close its investigation into the money transfer services industry, and to increase its inter-governmental competition advocacy efforts in this important market."

(Background information is attached.)

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**DEPARTMENT OF JUSTICE ANTITRUST DIVISION
STATEMENT REGARDING THE CLOSING OF ITS
WESTERN UNION MONEY TRANSFER SERVICES INVESTIGATION**

Today the Department of Justice announced that it has closed its investigation of Western Union's contracting practices in the money transfer services industry. After a thorough review, the Antitrust Division concluded that the facts did not support a claim that Western Union's contracting practices have had an anticompetitive effect on markets for money transfer or emergency bill payment services in the United States.

Founded in 1855, Western Union first introduced its money transfer service in 1871. For the ensuing century it functioned as the nation's regulated telegraph monopoly, and although it was deregulated by the FCC in the late 1970s, it retained a dominant share of the U.S. money transfer services market. Western Union was acquired in 1994 by First Financial Management Corp., which in turn was acquired by First Data Corp. in 1995 after the latter agreed to sell its MoneyGram wire transfer subsidiary in order to secure the approval of the Federal Trade Commission, which investigated the transaction. In 2003 First Data sought to acquire Concord EFS, Inc., and during its investigation into the proposed merger the Antitrust Division received numerous complaints relating to First Data's Western Union subsidiary. The Division's case against the First Data/Concord merger was settled through a consent decree that was entered in May 2004. However, Western Union's persistent high market shares and its use of exclusive agent agreements led the Division separately to investigate whether, under current market conditions, the company's contracting practices have unreasonably restrained trade or contributed to the company's maintenance of monopoly power.

Western Union offers money transfer and bill payment services through a network of retail agent locations including grocery stores, convenience stores, and other businesses. The Division's investigation focused on the competitive effects of Western Union's exclusive contracts with its retailer-agents, and on other Western Union practices that could dissuade agents from switching to competing networks.

Beginning in early 2004, a team of Division lawyers and economists began collecting and analyzing extensive information about Western Union's contracting practices and the effects of those practices in the money transfer and emergency bill payment industries. The Division interviewed representatives of Western Union and numerous third parties, thoroughly examined

the theoretical and empirical analyses suggested by third parties, reviewed a substantial number of documents, and engaged in empirical analyses of money transfer and bill payment data obtained from Western Union and third parties.

Like all of the Division's investigations, this investigation has been highly fact-specific, and many facts relevant to the Division's decision to close the investigation are not public. Consequently, it would be inappropriate to draw conclusions from today's decision regarding how the Division is likely to analyze particular collaborations or activities, or transactions involving particular firms, in the future.

The Division's Analysis

Since the 1980s, Western Union's contracts with its agents have generally been exclusive – *i.e.*, they prohibit the retail agents from offering competing money transfer services during the term of the contract.

The Division examined the information it collected to determine whether there was sufficient factual support for the allegation that Western Union's exclusive contracts with retail agents have unreasonably restrained trade by "locking up" available agents, thus substantially foreclosing competitors' access to distribution for money transfer and bill payment services.

Foreclosure of Distribution in the United States

To support a claim that Western Union's practices violate the antitrust laws, it would have to be shown that Western Union's exclusive contracts have foreclosed competitors from a substantial share of potential agents, and further that such practices have had an anticompetitive effect, such as increased prices, in the money transfer market.

Based on its review of the available evidence, the Division cannot conclude that Western Union's contracting practices have substantially foreclosed network competitors' access to distribution outlets in the United States. Despite Western Union's practices, it appears that retail locations remain available through which competitors in the U.S. can offer their services to consumers. (In particular foreign countries, Western Union's level of foreclosure was more significant, and this issue is discussed in a separate section below.) In recent years, Western Union's competitors have been able to increase their transaction volumes, expand their agent networks, and reach some consumers through new, alternative means such as the Internet.

The Division further considered whether Western Union's leading market position enabled it to restrain trade unreasonably. Although the evidence suggested that Western Union's exclusive contracts have in fact blocked for a period of time competitors' access to particular domestic agents that they desire, this situation does not appear to have prevented the expansion and promotion of competitive services to consumers in the United States. Furthermore, some consumers of bill payment services have increasing access to potential alternatives to agent-based bill payment, such as telephone-initiated debits and biller-initiated Automated Clearing House (ACH) transfers. These products, while not available to all consumers, appear to be gaining in volume and consumer acceptance.

Foreclosure in Foreign Countries

The Division also examined whether Western Union's contracting practices abroad have had anticompetitive effects on money transfers from the United States to particular countries. In analyzing competition for the provision of these services, the Division considered whether, in certain "corridors" (*i.e.*, United States – foreign country pairs), Western Union's exclusive practices have caused an anticompetitive impact on United States commerce and, if so, whether such practices have any procompetitive effects that may outweigh their anticompetitive impact.

The available evidence generally did not provide proof of substantial anticompetitive effects from Western Union's practices. The United States outbound remittance industry has grown in recent years, and its growth is expected to continue. The market's growth has attracted entry from a variety of firms, ranging from small family-owned businesses that specialize in serving immigrants in particular neighborhoods, to global financial institutions that distribute funds through retail branches of affiliate banks in foreign countries. In many corridors with large volumes of U.S. outbound transfers, Western Union's prices have followed a downward trend during the past several years.

In addition, efforts by policymakers to improve the financial infrastructure for inter-country payments, and to promote consumer awareness of competitive alternatives such as credit unions, have helped accelerate the competitive process. For example, since 2001 the U.S. Federal Reserve, the Department of the Treasury, and the government of Mexico, along with both countries' financial services industries, have worked together to promote competition among private transfer providers, to expand financial literacy among consumers and to improve

the payment systems infrastructure. This ultimately led to the development of an Automated Clearing House (ACH) connection between the two countries' payment systems. Entry by new competitors into the \$13 billion-a-year U.S.-Mexico corridor has led to decreased prices in the corridor. While the Antitrust Division cannot predict the extent to which such entry will be successful in the long-run, it appears to have had a disciplining effect on Western Union's prices where it has occurred.

For price competition in the remittance markets to continue at a level commensurate with the growth and importance of the industry, it is essential that competing money transfer networks continue to have access to a reasonable quantity and geographic breadth of distribution outlets in the receiving countries. Thus, Western Union's higher share of exclusive outlets in certain foreign countries was identified as a potential matter of concern. Furthermore, contractual provisions such as lengthy "non-compete" clauses and long termination periods could, under certain conditions, enhance the restrictive effects of exclusive contracts and raise barriers to entry. At least two foreign competition authorities, those of Russia and Ukraine, have publicly announced that they are investigating Western Union's use of exclusive agent contracts within their borders, and Russia has taken enforcement action against Western Union. In markets where price competition is lacking, the Division believes that policymakers' efforts to ensure reasonable access to the financial infrastructure, and to promote consumers' awareness of the range of alternative products, will likely enhance competition. The Division has long emphasized the importance of cooperation and coordination between antitrust authorities in investigations involving multinational markets, and it is committed, as part of its competition advocacy program, to work with the governments of such countries to make clear the substantial benefits that vigorous competition can bring to their consumers.

Conclusion

The evidence collected and reviewed by the Division was not sufficient to support the allegation that Western Union's practices have had a demonstrable and substantial anticompetitive effect on the United States money transfer and bill payment services industries. With respect to United States residents who transfer money to individuals abroad, the Division notes that consumer welfare requires reasonable competitive access to distribution outlets both here and in the receiving countries. Financial infrastructure and consumer access to alternatives, including banks and credit unions, are important factors affecting consumer prices. The evidence strongly suggests that no shortage of available agents exists in the U.S., but that consumers here and abroad would likely benefit from continued efforts of policymakers to improve access to a variety of safe and efficient money transfer options. Accordingly, the Division will continue to monitor this dynamic industry and to coordinate its enforcement efforts with foreign antitrust agencies whenever appropriate.